

BEFORE THE  
OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD  
DEPARTMENT OF INDUSTRIAL RELATIONS  
STATE OF CALIFORNIA

In the Matter of the Appeal  
of:

**PACIFIC GROSERVICE, INC.**  
385 East Brokaw Road  
San Jose, CA 95112

Employer

DOCKET(S) 96-R1D2-559  
through 561

**DECISION**

**Background and Jurisdictional Information**

Employer is a grocery wholesaler. Between December 21 and 28, 1995, the Division of Occupational Safety and Health (the Division), through Safety Engineering Technician Charles Jackson, conducted a complaint inspection at a place of employment maintained by Employer at 385 North Brokaw Road, San Jose, California (the site). On February 16, 1996, the Division issued to Employer the following citations and proposed civil penalties for alleged violations of occupational safety orders found in Title 8, California Code of Regulations:<sup>1</sup>

<u>Cit/Item</u> <u>Penalty</u>	<u>Section</u>	<u>Type</u>	
1	3664(a)(1) [forklift training program]	G	\$150
2	3657(a)(2) [employee lift platform]	S	\$750
3	3656(e) [fall protection]	S	\$75

Employer filed timely appeals contesting the existence of the violation alleged in Citation 1 and the reasonableness of the penalties proposed for Citations 2 and 3.

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<sup>1</sup> Unless otherwise specified, all references are to Sections of Title 8, California Code of Regulations.

Employer's appeal from Citation 1 (Docket 96-R1D2-559) and the Citation 3 civil penalty (Docket 96-R1D2-561) were disposed of in a prehearing order issued by Administrative Law Judge James Wolpman on September 30, 1996.

**Docket 96-R1D2-560**

Citation 2  
Serious  
§ 3657(a)(2)

**PENALTY ONLY**

**Summary of Evidence**

Employer, a grocery wholesaler, operates a warehouse at the site. The citation was issued because a forklift work platform, used to elevate an employee, was not, "...secured to the forks or mast to prevent tipping, slipping or falling," as required by the safety order.

Charles Jackson, the Division inspector, testified that he observed a supervisor standing on a forklift work platform. The forklift operator was lowered him from a storage area on top of a freezer to the warehouse floor. The storage area was approximately 11 or 12 feet above the floor. The mast was tilted backward somewhat toward the operator. The work platform was equipped with guardrails, but the gate on the front of the platform was open.

Mr. Jackson examined the forklift and work platform. The forks extended into brackets or receptacles on the platform. However, there were no locking devices on the forks and platform to keep the platform from sliding off the forks. Nor was the platform chained to the mast. Hence, the Division concluded that the platform was not secured to the mast or forks and issued the citation.

According to Mr. Jackson, the Division classified the violation as serious for two reasons. First, the employee riding the platform was a supervisor. Second, according to Jackson's education and experience and Division records regarding such matters, if the platform had slipped off the forks, the supervisor, more likely than not, would have suffered serious physical harm.

Barbara Mosciarella, Employer's Chief Operating Officer, appeared as Employer's representative and witness. She affirmed that Employer was appealing only the amount of the civil penalty and stipulated with the Division that the violation could have resulted in serious harm and that the civil penalty had been calculated in accordance with the

Director's penalty setting regulations.

Ms. Moscirella testified that Employer has been in business for approximately 12 years and has, at all times, made employee safety a high priority. As a result, Employer has an excellent safety record, free of serious accidents, and no previous citations for safety order violations.

Forklifts are used to raise and lower product and warehouse employees between the floor and elevated storage areas. A few years before the inspection, to improve employee safety, Employer purchased the attachable, guardrailed work platforms.

Employer thought the platforms met all safety requirements. No locking devices or chains came with the platforms. To Ms. Moscirella's knowledge, Employer was using them in accordance with the manufacturer's instructions and specifications and a platform had never slipped off the forks by accident.

Until the inspection, Employer believed it was safe to raise and lower an employee by platform so long as the forks were inserted in the platform receptacles and the mast was tilted backward. After the inspection, Employer installed chains and locks that secure the platforms to the masts.

### **Findings and Reasons for Decision**

EMPLOYER PURCHASED ATTACHABLE, RAILED PLATFORMS TO IMPROVE THE SAFETY OF FORKLIFT OPERATIONS.

EMPLOYER ATTACHED THE PLATFORMS TO THE FORKS BY THE MEANS THE MANUFACTURER PROVIDED.

EMPLOYER BELIEVED THAT IT WAS USING THE PLATFORMS IN ACCORDANCE WITH THE MANUFACTURER'S INSTRUCTIONS AND SPECIFICATIONS AND THAT BY DOING SO EMPLOYER COMPLIED WITH THE SAFETY ORDER.

A PLATFORM HAS NEVER SLIPPED OFF THE FORKS AT THE SITE.

EMPLOYER ABATED THE VIOLATION BY INSTALLING CHAINS.

The unrefuted testimony of Ms. Moscirella, summarized above, is credited. Based thereupon, the foregoing findings are found to be facts.

On this record, assessment of a \$750 civil penalty is not reasonably necessary to ensure Employer is aware of and complies with employee safety and health requirements. Though Employer unwitting fell short of complying with § 3657(2), it acted in good faith, through appropriate means, to attempt to provide safe work platforms. On the other hand, Mr. Jackson's unrefuted testimony describing the hazardousness of the forklift operation he observed, supports assessment of a smaller penalty as a safety enforcement reminder. Accordingly, the \$750 proposed civil penalty is set aside and a \$150 civil penalty is assessed.

### **Decision**

Pursuant to the above finding and reasons, Employer's appeal is disposed of as set forth in the attached summary table.

The prehearing order attached as "Exhibit A" is incorporated in this Decision and becomes effective with it.

Dated: April, 1997

DENNIS M. SULLIVAN  
Administrative Law Judge

DMS:cdh